IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO. 38/2003 & 44/2003

1. Deputy Collector (S.D.O.)
   Margao, Goa,

2. Executive Engineer,
   P.W.D., W.D. VI,
   Fatorda, Margao, Goa. ..... Appellants.

V/s.

Alvaro D'Souza Faria,
Opposite Transanzor, Aquem-Alto,
Margao, Goa. ..... Respondent.

Ms. L. Linhares, Addl. Govt. Advocate for the appellants.

Mr. C. A. Coutinho, Advocate for t he respondent.

CORAM : P.V. KAKADE, J.

DATE : 22nd September, 2006.

ORAL JUDGMENT :

Both these appeals are being disposed of by this common Judgment as the parties involved in the appeals are the same as well as the issue involved is also the same and both these appeals arise from the same Award given by the reference Court under Section 18 of the Land

Acquisition Act (hereinafter, referred to as “the Act”,) pertaining to the adjacent land of Village Seraulim, Salcete Taluka.

2. I have heard the learned Counsel for both the parties. Perused the record. The appeal is preferred by the State against the Award under Section 18 of the Act passed by the Additional District Judge, Margao whereby the reference of the respondent-claimant was partly allowed and the rate of compensation of the acquired land was fixed at Rs.52/- per sq. metre as against the rate which was awarded by the Land Acquisition Officer at the rate of Rs.4/- per sq. metre. In fact, the claimant had demanded the rate of Rs.700/- per sq. metre, which prayer came to be rejected.

3. By notification under Section 4 of the Act, the State acquired the impugned property consisting of Survey No.92/0, consisting of 4900 sq. metres of land involved in First Appeal No. 38/03 and land of 3 plots consisting of survey numbers 28/1, 28/7, 28/18 and 33/1, totally consisting of 1250 sq. metres in First Appeal No.44/03 from Village Duncolim, Seraulim for the purpose of construction of a road from Arcaband to Murida Pequeno Duncolim and Seraulim in Salcete Taluka. The Land Acquisition Officer, as noted above, offered the compensation of

Rs. 4/- per sq. metre and, therefore, unsatisfied claimant referred the reference under Section 18 of the Act.

4. The reference Court, on the basis of the available evidence on record, came to the conclusion that though the demanded rate of Rs.700/- per sq. metre could not be allowed, it was held that enhanced rate of compensation should be fixed at Rs.52/- per sq. metre and accordingly granted the same by the impugned Award. Hence, the present appeals filed by the State.

5. At the outset, it may be noted that the reference Judge has solely relied upon one sale instance dated 11.5.1989 consisting of 4000 sq. metres, wherein the land was sold at the price of Rs.75/- per sq. metre and the said property was located in Seraulim. The learned reference Judge was of the view that the land involved in the said sale instance was at a distance of about 750 metres from the acquired land and the sale transaction was of 11.5.89 i.e. prior to the date of Section 4 of the Act and the said land was situated at Seraulim and, hence, it could favorably be compared for the purpose of determining the market value of the acquired land.

6. In fact, perusal of the record also reveals that the acquired land is located behind Seraulim Church and it is at a distance of 300 metres away from Margao – Colva road. Further the acquired land is levelled land adjoining residential locality. It has also come in evidence that the acquired land is located within the settlement zone and is at a distance of 2.8 kms. from Margao, whereas the land involved in the sale instance was an agricultural land and was located on the distance of 3.8 kms. from Margao. Therefore, the learned Counsel for the respondent brought to my notice the test approved by the Apex Court in the case of ***Viluben Jhalejar Contractor (D) by LRs., vs. State of Gujarat,*** 2005(5) All MR (SC) 449 laying down the test of positive factors as against negative and urged that if such a test is made applicable, the acquired land was having more positive factors than the land involved in the sale instance which was taken up for comparison in order to determine the market value of the acquired land. I totally agree with the proposition submitted by the learned Counsel for the respondent, especially when the record is totally conspicuous by absence of any positive evidence to the contrary or in rebuttal to the evidence led by the claimant in the reference matter on behalf of the State.

No doubt, the valuation report of the expert witness need not be taken into account for the purpose of considering the pros and cons of the value determined by him as it is not clear as to when he visited the

property involved in the reference, i.e. whether in the year 1991 or in the year 1998, however, the fact remains that the valuation report also gives the location of the land in order to establish that it is located very close to residential locality of the Village and facilities like electricity, water supply, and transport are easily available in its close proximity.

7. The learned Addl. Govt. Advocate for the appellants, however, urged that since the land involved in the sale instance is located within the boundaries of different Villages, it should not be considered for comparison with the acquired land. In support of this submission, the learned Addl. Govt. Advocate sought to place reliance on the Judgment of the Apex Court in ***Kanwar Singh and ors. vs. Union of India,*** (1998) 8 SCC 136. Perusal of the Judgment shows that the Apex Court had observed that the contention that the claimants deserved to be awarded the same rate of compensation as was awarded to the claimants of the adjoining villages in the present facts and circumstances of the case was not tenable. In other words, it is clear that the facts and circumstances involved in that case did not permit the Apex Court to accept the comparison of the land located in the adjoining Village. However, this ruling cannot be made applicable to the present set of facts, especially when it is found that in all respects it has to be placed on superior footing than the land compared for the purpose of

fixing the market value as noted earlier. Moreover, it also cannot be ignored that the learned reference Judge has not accepted blindly the price of the land involved in the sale instance at the rate of Rs.75/- per sq. metre, however, due to the distance between the two lands, deduction of 30 % was made and the rate of compensation was ultimately fixed at Rs.52/- per sq. metre. In my view, therefore, no prejudice is caused to the appellants as the market rate which is fixed by the reference Court appears to be just, legal and proper even if we take into account the Apex Court ruling relied upon by the appellants in the case of ***Kanwar Singh and ors.*** (supra).

7. For the reasons recorded above, I hold that the reasoning adopted and the findings recorded by the reference Court appear to be just and, proper and, therefore, it would brook no interference at all. In the result, both the appeals stand dismissed with no order as to costs.

P.V. KAKADE, J.

ssm.